

IV. AMENDMENTS TO THE DRAWINGS

--- Replacement and annotated mark-up drawing sheets for amended figures showing the amended figures, if any, are attached at the Appendix hereto. Each figure is in compliance with 37 C.F.R. § 1.84. An explanation of the changes, if any, is set forth below in this “Amendments to the Drawings” section. Replacement drawing sheets are identified in the top margin as “Replacement Sheet.” Any replacement drawing sheet including amended figures includes all of the figures appearing on the immediate prior version of the sheet. Any annotated drawing sheets, if the same are required by the Examiner, are identified in the top margin as “Annotated Marked-Up Drawings.” Any deleted figure is noted by an instruction to delete the figure. Any corresponding amendment to the specification necessary to be made because of an amendment to the drawings in this section is made in the corresponding “Amendments to Specification” section.

- THE DRAWINGS OF THE PATENT IS HEREBY AMENDED AS SET FORTH BELOW:
 - *No Drawings are Present in this Application*
 - *Attachments: None*

V. REMARKS/ARGUMENTS

- STATUS OF THE CLAIMS

Claims 1, 5, 14, 15, 18 - 20 are pending in this application. Claims 1 is currently amended..

- REJECTIONS

- REJECTION UNDER 35 U.S.C. §112, First Paragraph

- Examiner's position

The Examiner rejected claims 1, 5, 14 – 15 and 18-20 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Examiner alleges that the term “pre-cooked” is not clear, that it is not clear what exactly is being pre-cooked.

- Applicants' Response

The Applicants traverse the rejection of claims 1, 5, 14 – 15 and 18-20 under 35 U.S.C. § 112, first paragraph. The term “pre-cooked” is clearly defined on page 2 of the specification, at 2nd paragraph, where it is stated that “...the present invention includes a low gluten wafer including about 1.0 part wheat starch, about 1.0 part pre-gelatinized wheat starch, where the wheat starch and pre-gelatinized wheat starch are combined into a substantially homogenous mixture. The low gluten wafer also includes about 2.0 parts of water having a temperature between about room temperature to about 212 degrees Fahrenheit, where the water is combined with substantially homogenous mixture of wheat starch and pre-gelatinized wheat starch until the entire mixture is substantially homogenous to create a “pre-cooked” mixture. From this description it is clear that the “pre-cooked” mixture is composed of 1.0 part wheat starch, about 1.0 part pre-gelatinized wheat starch, and about 2.0 parts of water, whereby the water has a temperature between about room temperature to about 212 degrees Fahrenheit.

Because the “pre-cooked” mixture is clearly defined, the Examiner is respectfully requested to withdrawal the rejection to claims 1, 5, 14 – 15 and 18-20 under 35 U.S.C. § 112, first paragraph.

- REJECTION UNDER 35 U.S.C. §112, Second Paragraph
 - Examiner's position

The Examiner rejected claims 1, 5, 14 – 15 and 18-20 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states on page 3 of the Office Action that “It is not clear how the “stock mixture” as it exists can contain water at the recited temperature.” The Examiner furthermore states that the meaning of “pre-cooked” is not clear.

- Applicants' Response

Applicants respectfully traverse the rejection of claims 1, 5, 14-15, and 18-20 under 35 U.S.C. § 112, second paragraph. Regarding the Examiner's question of how the “pre-cooked” mixture as it exists can contain water at the recited temperature, the Applicants respectfully point out first of all that this mixture need not exist for any length of time with the water being at the claimed temperature. It is only during production of this mixture that the mixture contains water at this temperature, i.e., water at this temperature is added to the mixture of wheat starch and pre-gelatinized wheat starch. This is made clear in the specification on page 5, lines 13 – 24 where it is stated that “The pre-cooked mixture may start with about 1.0 part wheat starch and about 1.0 part pre-gelatinized wheat starch...The pre-cooked mixture may also include about 2.0 parts of water having a temperature between about room temperature to about 212 degrees Fahrenheit, where the water is combined with the substantially homogenous mixture of wheat starch and pre-gelatinized wheat starch...” This means that the water at the desired temperature is added to the mixture of starch and pre-gelatinized wheat starch.

As for the meaning of “pre-cooked”, this term refers to the mixture of wheat starch, pre-gelatinized wheat starch, and water as it exists as a mixture before being cooked. This is described in the bottom paragraph on page 6 where it is stated that “In creating the pre-cooked mixture, the wheat starch and pre-gelatinized wheat starch are first combined into a substantially homogenous mixture and the water is then added and mixed until the entire mixture is substantially homogenous. The entire pre-cooked mixture is sheeted between two parallel heating plates...and cooked for between about 5 minutes and about 10 minutes at a temperature

of about 350 degrees Fahrenheit.” This means that the mixture is prepared by mixing wheat starch, pre-gelatinized wheat starch, and water (the “pre-cooked” mixture), followed by cooking.

This “pre-cooked” mixture is also described on page 3, 5th paragraph from top, where no reference is made to any form of cooking. The description of this mixture is as follows: “The present invention includes a method of making a low gluten wafer including the steps of combining wheat starch with pre-gelatinized wheat starch into a first substantially homogenous mixture, adding water to the first homogenous mixture where the water has a temperature between about room temperature and about 212 degrees Fahrenheit degrees until the combination of water and the first substantially homogenous mixture create a second homogenous mixture...” It is this “second homogenous mixture” that is subsequently cooked.

Accordingly, with this clarification concerning “stock mixture” and water content, the meaning of precooked, and the amended of claim one, Applicants request withdrawal of the rejections of Claims 1, 5, 14, 15 and 18-20 under 35 U.S.C. §112, second paragraph.

REJECTION UNDER 35 U.S.C. §103(a)

Applicants herein address the Examiner’s 103(a) rejections in respect to the claims as set forth in the Examiner’s Office Action.

- Examiner’s Position

Claims 1, 5, 14 – 15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 1927394 to Wernecke in view of applicants’ prior art admission. The Examiner states that Wernecke discloses a low gluten bread product that contains maximum 0.3% by weight gluten (Abstract). The Examiner further states that Wernecke discloses a low-gluten bread products designed for people suffering from Celiac disease. Furthermore, the Examiner states that Wernecke discloses that pre-gelatinized wheat starch serves as a structure improving component. This reference also discloses baking temperature of 400F.

- Applicants’ Response

Independent Claim 1 in Respect of the Wernecke (DE 1927394) reference:

Applicants respectfully traverse the Examiner's rejection of claims 1, 5, 14, and 15 with respect to the Wernecke (DE 1927394) reference. In clear distinction to the Wernecke DE 1927394 reference, independent claim 1, as amended herein, recites a pre-cooked mixture that consists of only about 50% of a mixture of wheat starch and pre-gelatinized wheat starch, and about 50% of water at a temperature of between about 100 degrees Fahrenheit and about 150 degrees Fahrenheit. No other ingredients are present.

The applicants respectfully submit that the reference cited by the Examiner does not disclose a mixture composed *only* of these ingredients, but one that has additional ingredients. The mix of in this reference includes additional ingredients such as fat, sugar tapioca starch, methylcellulose, or carboxymethylcellulose (see Abstract of the Wernecke DE 1927394 reference). In addition, contrary to the Examiner's opinion, Wernecke (DE 1927394) reference does not mention that the mixture contains water, i.e., it is simply a dry mixture to which water may be added at some later time.

Furthermore, from the reference cited by the Examiner (Wernecke, DE 1927394), it is obvious that proportion of the pregelatinised wheat starch is clearly less than 10% ("...with added 10% rel. their total weight in a structure improver composed of pectin, pregelatinised waxy maize, pregelatinised wheat starch, or tapioca starch, methylcellulose or carboxymethylcellulose").

For the reason described above, the Applicants respectfully submit that the stock mixture as set forth in independent claim 1 is not disclosed in the prior art of record (Wernecke (DE 1927394). Accordingly, reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. paragraph 103(a) is respectfully requested.

Therefore the Applicants respectfully submit that independent claim 1 is in condition for allowance.

- Dependent claims 5, 14 - 17

The Examiner is respectfully directed to note that dependent claims 5, 14, and 15 set forth additional novel features of the present invention. These claims are in condition for

allowance due to their dependency from allowable independent claim, as well as for the additional novel limitations set forth therein.

Claims 16 and 17 have been cancelled, and therefore the rejection of these claims have been rendered moot.

CONCLUSION TO REMARKS

Applicants assert that this response is fully responsive to the Examiner's Office Action dated March 17, 2008. Applicants respectfully seek early allowance of the pending claims.

Dated: September 17, 2008

Respectfully Submitted,



John Scott Winterle, PhD
Reg. No. 57,276
Kelley Drye & Warren LLP
Intellectual Property Department
400 Atlantic Street
Stamford, CT 06901-3512

Direct Tel.: 203-351-8051
Facsimile: 203-327-2669
e-mail: jwinterle@kelleydrye.com

VI. APPENDIX

- *No Appendix Included in this Response.*